IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Balwant Dhaka Vs. State of Raj.
S.B. CR. REVISION PETITION NO.1037/2006

Against order dated 18.10.2006 passed by Sessions Judge, Hanumangarh in Criminal Misc. Case No.53/2004 – State Vs. Deepak & Ors.

DATE OF ORDER :: 15th November, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Mridul Jain for the petitioner.
Mr. Vishnu Kachawaha, P.P.

BY THE COURT:

Admit. Issue notice.

Notice accepted.

Both the learned counsel for parties submits that matter may be disposed of at the admission stage. Therefore, matter is heard and is being disposed of at the admission stage.

By this revision petition, challenge has been made to an order passed by learned Sessions Judge

Hanumangarh in Cr. Misc. Case No.53/2004 on 18.10.06 whereby the application moved under Sec. 319 of Cr.P.C. by the learned Public Prosecutor has been allowed and the accused petitioner has been summoned through nonbailable warrant.

The contention of the learned counsel is that in the instant case the Police after investigation did not find involvement of the accused petitioner in relation to the incident. His further submission is that the learned trial court on the basis of statements of PW/2 Keshar, PW/3 Govind and PW/6 Lal Chand came to the conclusion that the accused petitioner was also involved in the case, therefore, summoned the accused through non-bailable warrant. The submission is that the three statements would go to show that the trial court did not appreciate the matter in its correct perspective. He submits that he does not want to go into the niceties of the findings recorded and the witnesses examined before the trial court but at the same time he submits that keeping in view the fact that Police after investigation found that the petitioner was not involved in the case, therefore, the petitioner be summoned

through bailable warrant in stead of non-bailable warrant.

Learned Public Prosecutor has submitted that Sec. 319 of the Cr.P.C. states about summoning the accused during the course of trial at any stage of the trial if the court comes to the conclusion that there is involvement of the person who has been left and should be tried with other accused in the case. As regards summoning through non-bailable warrant is concerned, it is submitted that it is the discretion of the court.

After having considered the matter and the submissions made before me, I am of the view that prima facie the submissions made by the learned counsel for the petitioner that the accused should be summoned through bailable warrant appears to be plausible for the reason that when Police after investigation reached to the conclusion that there was no involvement of the accused petitioner, in such a circumstances, the contention raised by the learned counsel for the petitioner requires acceptance. As far as the rest of the order is concerned, that requires to be maintained.

Accordingly, the revision petition is accepted partly. The order passed by the learned trial court is modified to the extent that instead of summoning the accused petitioner by non bailable warrant, he be summoned through bailable warrant. The learned trial court shall now withdraw the non bailable warrant unserved and the petitioner will now be summoned through bailable warrant. The petitioner, in case, appears before the learned trial court on the date fixed in the matter, then the trial court shall release the petitioner on bail on furnishing personal bail bonds to its satisfaction.

The revision petition stands disposed of as indicated hereinabove.

(SATYA PRAKASH PATHAK), J.

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